

**DIVISION CIRCULAR #37  
(N.J.A.C. 10:48-1)**

**DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE:** May 21, 2001

**DATE ISSUED:** June 6, 2001

**(Rescinds Division Circular #37, "Appeal Procedure" issued September 30, 1996)**

**I. TITLE: APPEAL PROCEDURE**

**II. PURPOSE:** To delineate the steps to be taken when disagreements arise between individuals receiving services and the Division.

**III. SCOPE:** This circular applies to all Division components and only those providers licensed by the Division.

**IV. GENERAL STANDARDS:**

**NOTE:** The remainder of this circular, with the exception of the Appendix, is the Appeal Procedure as it appears in N.J.A.C. 10:48-1.

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Deborah Trub Wehrle, Director  
Division of Developmental Disabilities

**10:48-1.1 General Provisions**

- (a) The purpose of this procedural rule is to delineate the steps to be taken when disagreements arise between citizens and the Division of Developmental Disabilities (DDD). Its aim is to encourage and permit the early resolution of disputes and, where that is not possible, to identify the steps to be taken for review by the appropriate authority.
- (b) This subchapter pertains to all disputes and disagreements with service components of the Division of Developmental Disabilities involving a competent adult receiving services from or applying for services of the Division, the guardian of a minor or incompetent adult, the proposed guardian, a licensee of the Division or an authorized representative of a competent adult, guardian of a minor or incompetent adult. In the instance of an attorney, written verification of a client/attorney relationship shall be required.
- (c) It is expected that, in most disputes between appellants and service components, the appellant will know the identity of the service component with whom there is disagreement. Where the precise service component is not known, such information may be obtained by calling the Administrative Practice Officer of DDD (609) 633-2209.
- (d) For persons of legal school age, when disputes arise relating to educational program issues, mediation pursuant to N.J.A.C. 6:28-2.6 shall be available through the Office of Education, Department of Human Services. If either party is unwilling to participate in mediation, a written request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education. A request for mediation is not a prerequisite to a hearing.
- (e) Division staff are responsible for informing persons served and their families/guardians about appeals and to supply them with copies of the appeal procedure.
- (f) An appeal may be settled at any time by a written agreement of both parties. The settlement agreement shall be considered the final decision. The terms of the settlement agreement shall be binding upon the appellant and the Division. The terms of the settlement agreement shall be applicable only to the specific matter under appeal and shall not be released to anyone who is not a party to the settlement.
- (g) A settlement may be accepted by the chairperson of an informal conference or the review officer in an administrative review in the same manner as an Administrative Law Judge, in the definition of settlement at N.J.A.C. 10:48-1.2.

- (h) Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1. Non-contested matters shall be referred to administrative review.
- (i) Appeals of eligibility, licensure action or specific offers of placement shall be initiated within 30 days from the date on the written notification of ineligibility or licensure action.
- (j) Appeals of services shall be limited to those services indicated in the Individual Habilitation Plan and defined in N.J.S.A. 30:6D-10.
- (k) Except in emergencies, an appellant may request that the Division Director defer the placement of an individual pending resolution of an administrative appeal when the following circumstances apply:
  - 1. The appeal is received verbally or in writing 10 calendar days before the proposed placement, and:
    - i. The appellant can demonstrate that the placement may place the individual at risk of abuse or neglect; or
    - ii. The appellant has new information that was unknown or available at the time the placement offer was made; or
    - iii. The appellant can demonstrate that the placement shall significantly compromise the appellant's ability to have the Division's action reversed or modified through the appeal process.
  - 2. If the Division Director agrees to defer the placement, the Division shall not be responsible to maintain the status quo unless the Division was funding placement prior the request to defer.
- (l) If a placement is made on an emergency basis, the appeal may be filed within 30 calendar days following the placement. The individual shall be maintained in the placement to which he or she was placed during the pending of the appeal.
- (m) If an appellant fails to follow the time limits established, the Director's decision is final.
- (n) No transcript shall be made of an informal conference.

- (o) An initial appeal shall be made in writing to the administrative head of the component in which the dispute exists except for licensure actions. Appeals of licensure actions shall be made to the Division Director.
- (p) The administrative head of the component shall review the appeal to ensure that it conforms with the definition herein. If the administrative head of the component determines that the matter does not conform to the definition of appeal, he or she shall review the matter with the Division's Administrative Practice Officer. If the Administrative Practice Officer agrees that the matter does not conform to the definition of an appeal, the administrative head of the component shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.
- (q) The appellant shall be notified in writing that the matter does not conform to the definition of an appeal within 10 working days of receipt by the administrative head of the component.
- (r) Evidence as defined in N.J.A.C. 1:1-2 may be submitted in informal conference or administrative reviews. An allegation or conjecture does not constitute evidence.
- (s) The assessment of an individual to contribute toward the cost of care and maintenance if he or she has been residentially placed by the Division may be appealed in accordance with N.J.A.C. 10:46-7.1(b) through (e).
- (t) Recommendation of placement changes, where no specific offers of placement have been made, shall be considered non-contested.

## **10:48-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the meanings as defined in N.J.A.C. 1:1-2 or this section unless the context clearly indicates otherwise.

“Administrative hearing” means a proceeding which is conducted by the Office of Administrative Law.

“Administrative review” means a proceeding which is conducted by a review officer appointed by the Division Director or a paper review as decided by the Division Director following an informal conference concerning a non-contested matter.

“Appeal” means a request made by an authorized person within the established time frames for a review of a disputed decision of the Division

which involves eligibility, placement, provision of service or licensure. The decision shall be a specific action or proposed action which is identifiable in terms of date, "and person(s) making the decision". General complaints or employee grievances shall not be considered appeals.

"Appellant" means the authorized person who may file an appeal with a service component. The authorized person is one of the following:

1. A competent adult receiving services from or applying for services of the Division;
2. The guardian of a minor or incompetent adult who is receiving services from or applying for services from the Division;
3. The proposed guardian of an individual receiving services where the Division has assessed that the individual is in need of a guardian but a guardian has not yet been appointed;
4. A licensee of the Division in response to a licensure action; or
5. An authorized representative of a competent adult receiving services, a guardian of a minor, a guardian for an incompetent adult receiving services or a licensee. Written verification from the competent adult or guardian of a minor or incompetent adult authorizing representation shall be required.

"Chairperson" means the individual appointed by the administrative head of the component to hold an informal conference.

"Contested matter" means an adversarial proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. (N.J.S.A. 52:14B-2(b), N.J.A.C. 1:1.)

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay. (N.J.A.C. 1.1-2.1)

“Final decision” means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after a hearing conducted in accordance with these rules. (N.J.A.C.1:1-2.1)

“Informal conference” means a meeting prior to an administrative review in which the respective parties may informally attempt to resolve the issue which is the subject of appeal.

“Involved parties” means the representative of the appellant and the service component.

“Non-contested case” means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case. The Director, Division of Developmental Disabilities, may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL. (N.J.S.A. 52:14F-5 (a); N.J.A.C. 1:1-2.1)

“Office of Administrative Law (OAL)” means an independent unit assigned to the Department of State which has the authority to hear contested matters.

“Placement” means the out of home living arrangement, other than for respite, provided by the Division or the day program exclusive of independent employment arranged by the Division.

“Recommended Decision” means the initial determination made by a Division review officer. That decision is subject to comments or exceptions by the parties and may be accepted, modified or rejected by the Division Director.

“Service component” means the operational unit of the Division of Developmental Disabilities (for example, Developmental Center, region, bureau, etc.) which has responsibility for the disputed matter.

“Settlement” means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including (1) pre-transmission settlement efforts by an agency; (2) pre-transmission settlement efforts by an administrative law judge at the request of an agency; (3) mediation by an administrative law judge; and (4) post-transmission settlement conferences by an administrative law judge. (N.J.A.C. 1:1-2.1)

“Settlement Conference” means an initial step toward resolving a contested matter prior to transmitting the appeal to the OAL as a contested case.

### **10:48-1.3 Contested Cases**

- (a) Appeals of licensure actions, determination of ineligibility for services and appeals of specific offers of placement shall be considered to be contested.
  - 1. The request shall be in writing and shall contain the information required below. This information shall be the basis of an initial pleading should the matter be transmitted to the Office of Administrative Law. An appeal shall be denied if the required information is not provided. The request shall include:
    - i. Name and address of appellant;
    - ii. Name and address of person with developmental disabilities, if the appeal is made by the person’s legal guardian;
    - iii. A brief statement of the matter under appeal;
    - iv. A list of potential witnesses; and
    - v. Reference to the law, rule, regulation or policy alleged to be violated.
- (b) Appeals of licensure actions shall be forwarded to the Division Director for actions in accordance with N.J.A.C. 10:48-1.4.
- (c) If the matter does not meet the conditions of (a) above, and the appellant believes that the matter is contested as defined herein, the appellant shall set forth his or her reasons supporting that the matter should be considered contested in writing.
- (d) The appeal shall be made to the administrative head of the component who shall review the appeal and decide if it is a contested or non-contested matter.
  - 1. If the matter is determined to be contested, prior to transmittal to the OAL, a settlement conference shall be scheduled by the administrative head of the component.

2. If the matter is determined to be non-contested, the requirements of 10:48-1.5 shall apply.
  - i. The appellant shall be notified in writing that the matter is non-contested.
  - ii. If the appellant disagrees, his or her may request a review of that decision by the Division Director.
- (e) The appellant shall be notified in writing of a time and date of a settlement conference.
- (f) The settlement conference shall require a meeting of the parties unless both parties agree to a conference by telephone.
  1. The settlement conference shall be chaired by a designees of the administrative head of the component.
  2. The purpose of the conference is to negotiate a settlement and all matters discussed shall remain confidential and inadmissible as evidence.
  3. Evidence or testimony shall not be presented.
  4. No tape recording of the matter shall be made.
  5. The appellant may elect to be represented by legal counsel.
  6. In addition to the administrative head of the component's designee, a representative of the service component initiating the action under appeal shall be present. The Division may elect to have representation by the Office of the Attorney General.
- (g) If agreement is reached, a settlement agreement shall be negotiated and the terms of the agreement shall be made in writing. The settlement shall be time limited or otherwise note when the terms of the agreement shall have been satisfied.
- (h) All parties shall sign the agreement. Any settlement is contingent upon the signature of the administrative head of the component.
- (i) The settlement agreement shall conclude the matter.



- (j) If no settlement is possible, the administrative head of the component shall notify the appellant that he or she may submit a written request to the Director, Division of Developmental Disabilities to transmit the matter for an administrative appeal before the OAL.

#### **10:48-1.4 Office of Administrative Law**

- (a) Those matters determined to be contested shall be referred to the Office of Administrative Law (OAL) for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
  - 1. In the instance of licensure appeals, the matter shall be transmitted within 10 working days of the receipt of the appeal.
  - 2. In the instance of all other contested matters, the matter shall be transmitted within 10 working days of the notice by the administrative head of the component that the settlement conference did not resolve the matter.
  - 3. While contested cases are being prepared for transmittal to OAL, further efforts may be made to resolve the issue formally.
  - 4. The Director, Division of Developmental Disabilities may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o)).
- (c) A decision rendered by OAL shall be adopted, rejected or modified by the Director, Division of Developmental Disabilities within 45 days of its receipt (N.J.S.A. 52:14B-10(c)). This shall be construed as constituting the final administrative decision of the matter under appeal.
- (d) Upon issuance, the final administrative decision shall be sent to the involved parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.
- (e) The Director shall notify the appellant that the matter has been transmitted to the OAL.

**10:48-1.5 Non-contested Cases**

(a) Informal Conference requirements are as follows:

1. An informal conference shall be scheduled by the administrative head of the component in response to a non-contested matter. The informal conference shall be scheduled no more than 20 working days from the date that a matter is determined to be non-contested. Extension of the conference date beyond 20 days may only occur upon mutual agreement of both parties.
2. The administrative head of the component shall appoint a chairperson to convene the Informal Conference.
3. The chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the position of both parties and a decision with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to the appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.
4. The appellant may be represented by legal counsel at the informal conference.
5. No transcript shall be made of the informal conference.
6. The Rules of Evidence shall not be strictly enforced.

(b) Should resolution not be possible at the informal conference level, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for an administrative appeal.

1. Written request for an administrative appeal shall be made within 15 working days from the date on the written summary.
2. The Director shall offer an Administrative Review Conference with the parties present or a paper review without the parties appearing. The Division Director shall appoint an Administrative Review Officer.

(c) Administrative paper review requirements are as follows:

1. Each party shall submit written arguments supporting their position to the review officer within 20 calendar days of written notification of the paper review. Evidence may also be provided.

2. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement of an individual into evidence instead of an affidavit.
  3. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.
  4. A written decision shall be forwarded to the involved parties within 20 working days of the receipt of both arguments. The written decision shall set forth the reasons for conducting a paper review. This shall be considered the Recommended Decision.
  5. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.
  6. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.
  7. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.
- (d) Administrative review conference requirements are as follows:
1. An administrative review conference shall be scheduled within 20 working days of receipt of the appeal. Adjournments may be granted by the Division Director for good and valid reason.
  2. The appellant may be represented by attorney or spokesperson and may present documentation and such witnesses as have knowledge of the issues involved.
  3. The service component shall be represented by a person designated by the administrative head of the component and may produce documentation and such witnesses as have direct knowledge of the issues involved. The person representing the component may not be the same person who chaired the informal conference.
  4. A verbatim tape recording of the proceeding shall be made. The party requesting a written transcript shall bear the costs of

transcription and shall provide copies to the other party and review officer at no cost.

5. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement by an individual if the individual is not present at the administrative review.
6. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.
7. The appellant may request that an employee of the Division testify at the conference. The appellant shall make such a request in writing to the Review Officer at least five working days prior to the conference. The request shall include the name, work location, title (if known) and a summary of the information to be provided by the employee.
8. The administrative review conference shall adhere to the following format:
  - i. An opening statement by each party;
  - ii. The presentation of testimony and evidence. There shall be the opportunity for cross-examination;
  - iii. Rebuttal of testimony and evidence. There shall be the opportunity for cross examination; and
  - iv. A Summary.
9. The review officer shall render a written decision within 20 working days of the review conference. This shall be considered the Recommended Decision.
10. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.
11. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

12. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

**10:48-1.6 Emergency relief**

Emergency relief shall be available as provided in N.J.A.C. 1:1-2.6.

## APPENDIX

- I. **Title:**           **SETTLEMENT PROCEDURE**
- II. **Purpose:**       To establish a uniform system for developing settlement agreements to resolve appeals filed under Division Circular #37.
- III. **Scope:**       This circular applies to all Division components.
- IV. **Policies:**     Appeals may be made in accordance with Division Circular #37.
- V. **General Standards:**
  - A. **Definitions:** - For the purpose of this circular, the following terms shall have the meanings defined herein:

“Settlement” means an agreement between parties which resolves disputed matters and may end all or part of an appeal.

“Division Administrative Practice Officer” (APO) means the Division staff member assigned as liaison to the Department’s Office of Legal and Regulatory Liaison and the Office of the Attorney General.

“Regional Administrative Practice Officer” means the Division staff member assigned by the RAD to act as liaison in all aspects of legal matters with the Division’s APO.

“Regional Assistant Director” (RAD) means an individual appointed by the Division Director to plan, organize and deliver integrated community-based and institutional services to a specific region.
  - B. Each component responsible for appeals against the Division shall coordinate them through the Regional APO.
  - C. Appeals of contested matters shall be heard by the Office of Administrative Law and shall be negotiated by the assigned Deputy Attorney General.
  - D. Appeals of non-contested matters heard by a Division Hearing Officer shall be negotiated by the Division’s Administrative Practice Officer.

**VI. Procedures:**

- A. The Regional APO liaison shall identify possible settlements to resolve matters under appeals. These settlements shall be reviewed with the head of the component and the Regional Assistant Director.
- B. The Regional APO shall make a written offer of settlement to the individual, guardian or their legal representative or refer the offer to the assigned DAG.
- C. Any negotiations of terms of the settlement shall be made through the individual, guardian or legal representative and the APO.
- D. Where the terms of the settlement can be accomplished within the resources of the Region, the RAD may authorize and sign the settlement. The Division APO shall receive a copy of the settlement.
- E. Where the terms of the settlement cannot be accomplished within the resources of the region, possible settlement offers shall be communicated to the Division APO.
- F. Where the terms of the settlement cannot be accomplished within the resources of the region, the settlement offer shall be authorized and signed by the Division Director.